

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

SANDRA S. VANCE, Individually  
and on Behalf of her Minor  
Children, Jeffrey C. Vance  
and Wyatt D. Vance

Plaintiff

V.

NO. 2:95CV102-B-O

W.G. YATES AND SONS  
CONSTRUCTION COMPANY

Defendant

**ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT**

This cause comes before the court upon the plaintiff's motion for relief from judgment.

Upon due consideration, the court finds that the motion is without merit and should be denied.

In September of 1995, the attorneys representing the plaintiff at that time moved to withdraw as they had not heard from or been able to contact the plaintiff for two months, and the plaintiff had failed to assist them in prosecuting her case by providing the names of witnesses and the EEOC investigative report. By order dated September 25, 1995, United States Magistrate Judge J. David Orlansky allowed the plaintiff's attorneys to withdraw and granted the plaintiff twenty days in which to find new counsel or notify the court of her intent to proceed pro se.

On October 31, 1995, the Magistrate Judge held a case management conference in which neither the plaintiff nor anyone on her behalf attended. Shortly thereafter, the defendant moved to dismiss under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. The

Magistrate Judge issued a report and recommendation on November 22, 1995, which recommended dismissal of the case. On December 18, 1995, this court entered a final judgment adopting the report and recommendation and dismissing the plaintiff's case with prejudice pursuant to Rule 41(b). The final judgment noted that the report and recommendation had been served upon the plaintiff by regular mail at her last known address, that more than ten days had elapsed since service of the report and recommendation, and that no objection thereto had been filed by the plaintiff.

The plaintiff now moves for relief from judgment under Rule 60(b)(6) of the Federal Rules of Civil Procedure on the grounds that this court abused its discretion in dismissing this action with prejudice. The plaintiff asserts that after the court allowed her previous counsel to withdraw, it directed all notices to an address that the court knew was no longer valid, by virtue of the fact in inability to contact her. The court further allowed the defendant to proceed with a motion to dismiss against a plaintiff who was not represented by counsel and who did not have actual notice of the defendant's motion. The plaintiff contends that the dismissal should be without prejudice in the absence of a clear record of delay and contumacious conduct.

The issue of whether the court abused its discretion in dismissing this action with prejudice is one that is more appropriately raised in a timely appeal. Nevertheless, the court will review the motion in accordance with the standards for a Rule 60(b)(6) motion for relief from judgment. The court notes that relief from judgment under Rule 60(b)(6) should only be granted when such motion is filed within a reasonable time after dismissal. Fed. R. Civ. P. 60(b)(6); Pryor v. United States Postal Serv., 769 F.2d 281, 287-288 (5th Cir. 1995). Even if the movant satisfies the timeliness requirement, she must still show unique or extraordinary circumstances that justify relief. Aucoin v. K-Mart Apparel Fashion Corp., 943 F.2d 6, 8-9 (5th Cir. 1991);

Pryor, 769 F.2d at 288 n.5.

The plaintiff has waited fifteen months after dismissal to seek relief from judgment. Prior to dismissal, the plaintiff failed to keep either her previous attorneys or the court advised of her current address, refused to cooperate with her previous attorneys in pursuing her case, neglected to attend the case management conference, and in general, failed to prosecute her case. The plaintiff was warned on multiple occasions that her case could be dismissed for failure to prosecute. The court's order of September 25, 1995, allowing her attorneys to withdraw, specifically advised the plaintiff of such and required the plaintiff to take certain action with the court. The motion to dismiss, as well as the Magistrate Judge's report and recommendation, neither of which were responded to by the plaintiff, provided further notice of the likelihood of dismissal if the plaintiff did not take action to preserve her claim. While the court realizes that the plaintiff may not have received her notices in a timely fashion, this is her own fault for failing to ensure that the court and/or her attorneys had her current address. Furthermore, if the plaintiff had moved, a simple forwarding address left with her old post office would have enabled her to receive mail from the court or her attorneys.<sup>1</sup> Considering the plaintiff's utter failure to keep her attorneys or the court apprised of her address or to take any action to preserve her case, the court finds that dismissal of this action was appropriate. The plaintiff has failed to present evidence of any unique or extraordinary circumstances that would justify relief from judgment. Furthermore, a delay of fifteen months in bringing this motion for relief from judgment fails to comport with the timeliness requirements of Rule 60(b). The defendant has spent time and money defending

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<sup>1</sup> The plaintiff received the EEOC's notice of right to sue, mailed to her old address, which indicates that she was receiving her mail, though the length of time involved between mailing and receipt indicates that the plaintiff may not have had a proper forwarding address on file with the post office.

this case and should not be required to start all over again at this late date.

For the foregoing reasons, the court finds that the plaintiff's motion for relief from judgment is neither timely nor based upon extraordinary circumstances. It is therefore

**ORDERED** that the plaintiff's motion for relief from judgment is **DENIED**.

THIS, the \_\_\_\_ day of June, 1997.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE